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chased, or was furnished with ready money with which to pay cash for them. A note to this case reviews the other authorities on the liability of a husband for necessities furnished his wife while living with him.

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CONSTITUTIONAL LAW—CONTRACTS—PAYMENT OF EMPLOYEES IN STORE ORDERS—VA. CODE 1904, SEC. 3657 D.—A statute similar to the Virginia Act, forbidding, under penalty, persons or corporations engaged in private enterprises from paying employees in store orders not redeemable in cash is held, in *State v. Missouri Tie & T. Co* (Mo.), 65 L. R. A. 588, to be unconstitutional as interfering with the right to contract.

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CONSTITUTIONAL LAW—RIGHT OF TRIAL BY JURY—CHANGE OF VENUE—CF. SEC. 4036, VA. CODE 1904.—A statute which provides for a change of place of trial to another county, upon the application of the State's attorney, when a fair and impartial trial cannot be had in the original county, is held, in *Barry v. Truax* (N. D.), 65 L. R. A. 762, not to be invalid as a deprivation of the constitutional right of trial by jury. The same question may be raised under the Virginia statute above mentioned.

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PERSONAL INJURY—NEGLIGENT DESTRUCTION OF SIGHT OF PUPIL BY TEACHER.—A teacher who threw a pencil at a pupil to attract his attention is held, in *Drum v. Miller* (N. C.), 65 L. R. A. 890, to be liable for the destruction thereby of the sight of the pupil, if he did not act with ordinary care, and the injury was the natural and probable result of his negligence. The other authorities on liability of school teacher for personal injury to pupil are collated in a note to this case.

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UNFAIR COMPETITION.—The use upon bottles containing water from the Saratoga spring of a label in which the word "Saratoga" is made inconspicuous, and the word "Vichy" prominent, so that when the bottles are standing on a table or shelf the word "Vichy" is the prominent object of sight, is held, in *La Republique Francaise v. Saratoga Vichy Springs Co.* (C. C. A. 2d C.), 65 L. R. A. 830, to be unfair competition with bottled waters from the commune of Vichy, in France, which had long been upon the market under that name. See, also, 10 Va. Law Reg. 359, 552.

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LARCENY BY HUSBAND AND WIFE—EFFECT OF MARRIED WOMAN'S LAW—SEC. 2286 A, VA. CODE 1904.—That a man may be guilty of larceny of property which the Constitution makes the sole and separate property of his wife is decided in *Hunt v. State* (Ark.), 65 L. R. A. 71. As at common law, husband and wife were one and "that one was the husband," neither husband nor wife could be guilty of larceny of the other's property. "But a third person may be convicted of larceny of community property, notwithstanding the wife consents to the taking, where she consented to have it taken with the felonious intention of depriving her husband of it. *People v. Swalm*, 80 Cal. 46, 13 Am. St. Rep. 96, 22 Pac. 67. One who has committed or intends to commit adultery with another's wife may be convicted of larceny if he feloniously takes the husband's

property, even with the wife's consent. *State v. Banks*, 48 Ind. 197; *Lamphier v. State*, 70 Ind. 317"—note to *People v. Miller*, 88 Am. St. Rep. 597. See, also, 57 Am. Dec. 283.

But the common law fiction of the unity of the husband and wife has been done away with, and in many jurisdictions it would seem that the married women's acts have made it possible for the husband or wife to commit larceny upon the other's property, as in *Hunt v. State*, *supra*. In *Beasley v. State*, 138 Ind. 552, 46 Am. St. 418, 422, it was held that as the statutes of Indiana gave the wife exclusive control and authority over her personal property, and greatly enlarged her personal rights as to the disposition thereof, the husband could perpetrate the crime of larceny upon the wife's goods. "By virtue of these statutes," said the court in the above case, "a woman may hold her own property; make her own money; enter into her own contracts; pay her own debts. She may even contract with her own husband. If he defrauds her, she may recover." All this a wife may do in Virginia under sec. 2286a, Va. Code 1904. If she can contract with her husband and recover for his breach of contract or fraud, it would seem that either might be punished for stealing from the other, especially if they occupied the relations of grass-widow and grass-widower.

C. B. G.

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MARSHALLING—THE RIGHT OF THE DEVISEE OF LAND ENCUMBERED WITH A MORTGAGE OR VENDOR'S LIEN TO CLAIM EXONERATION OUT OF PECUNIARY LEGACIES.—Under the title "Right of the Devisee of a Mortgaged Estate to Claim Exoneration out of Pecuniary Legacies," 18 *Harvard Law Review*, 221, there appeared in that journal the following note:

"In marshalling the assets of a decedent for the payment of debts and legacies, the rule that the personal estate is the natural primary fund for the payment of debts contracted by the deceased is universally recognized. 2 Woerner, Am. Law of Administration, 1093. Some limitations to this rule have grown up, however. One of these, the holding of mortgaged land which has come to a devisee primarily liable for the mortgaged debt, is discussed in a recent article in the Virginia Law Register, "The Equitable Doctrine of Marshalling the Assets of a Decedent's Estate for the Payment of Debts," by C. B. Garnett, 10 Va. L. Reg. 175. That the mortgagee in such cases may, in the absence of statutes, resort to the personality for the payment of the debt is not questioned. *Hewes v. Dehon*, 3 Gray (Mass.) 205. When he does this, however, to the detriment of pecuniary legatees, equity gives those legatees a claim on the estate to the extent to which funds, otherwise theirs, have been applied in discharging the debt. This has long been settled in England. *Lutkins v. Leigh*, Cas. t. Talb. 53. At present, in that country, the matter is to a large extent covered by statutes. 17 & 18 Vict. c. 113. The English doctrine is generally followed in the United States, though not universally. *Gould v. Winthrop*, 5 R. I. 319.

"It would seem that the prevailing view is not wholly unassailable. It is not altogether easy to see the grounds on which the courts have taken the mortgage debt out of the class of other debts. In the case of a vendor's lien on land devised it has been held that pecuniary legacies may be encroached upon for the exoneration of the land, and that the legatees do not thereby gain the right to